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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

FARID PAKRAVAN et al., Plaintiffs and Appellants, v. VATCHE HALAJIAN, Defendant and Appellant.	B201864 (Los Angeles County Super. Ct. No. LC075154 c/w SC090935)

APPEALS from a judgment of the Superior Court of Los Angeles County, Bert Glennon, Jr., Judge. Affirmed.

Law Office of Frank J. Lizarraga, Jr. and Frank J. Lizarraga, Jr. for Defendant and Appellant.

Shepard, Mullin, Richter & Hampton, Christopher S. Reeder, Beverly Y. Lu and Yaw-Jiun (Gene) Wu for Plaintiffs and Appellants.

INTRODUCTION

Defendant Vatche Halajian, D.D.S. (Halajian) appeals from a judgment in favor of plaintiffs Farid Pakravan, D.D.S. (Pakravan); Farhad Manavi, D.D.S. (Manavi); Soleyman Cohen/Sedgh, D.D.S. (Cohen); Family Dental Care of Lancaster (Family Dental); and Frontier Dental Management Co., Inc. (Frontier). Plaintiffs appeal from the same judgment.

On appeal, defendant claims evidentiary error, abuse of discretion in awarding attorney's fees to plaintiffs on the entire action, and error in dissolving the individual parties' partnership and ordering his interest sold to plaintiffs. Plaintiffs contend the trial court erred in striking their award of punitive damages. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1995, Pakravan, Manavi and Cohen owned four dental practices. A broker approached Pakravan and Manavi about acquiring a dental practice in Lancaster. The three were interested in acquiring it.

Manavi approached Halajian, whom he knew from dental school, about forming a partnership to operate the Lancaster practice. At this time, Halajian was an associate dentist without an ownership interest in his practice. Halajian agreed.

The four dentists formed Family Dental as a partnership. They agreed that Halajian would have a 25 percent interest in the practice and perform dentistry. Pakravan, Manavi and Cohen collectively would have a 75 percent interest and provide administrative and marketing services for the practice. They also agreed to pay $250 to each dentist who worked a full day at the practice. They initially had no written partnership agreement.

In June 1995, all four dentists signed a 15-year lease for the Lancaster office. They renovated and supplied the office and hired employees for the practice. Halajian paid 25 percent of these costs, and the other three paid 75 percent. Pakravan, Manavi and

Cohen visited the office once or twice a week to assist Halajian, to familiarize him with Denti-Cal rules and regulations and to set up the billing and collections system.

In 1996, the relationship between the parties changed. According to Manavi, Halajian sought to increase his ownership of Family Dental to 40 percent and to document the partnership agreement. He contributed additional funds in order to increase his ownership percentage.

According to Halajian, it was Pakravan, Manavi and Cohen who initiated the change. They wanted to open more offices and have other dentists, like Halajian, practice dentistry in those offices. Pakravan, Manavi and Cohen would focus on the business aspects of the dental practices.

On September 1, 1996, the four dentists entered into a Management Services Agreement (MSA), which set forth the parties' responsibilities. The following day, Halajian and Pakravan entered into a Partnership Agreement and a Buy and Sell Agreement (Buy-Sell). Pakravan signed the Partnership Agreement on behalf of himself, Manavi and Cohen because at this time, Pakravan was going to Family Dental on a weekly basis, while the other two were not.

Prior to the execution of the MSA, Partnership Agreement and Buy-Sell, in August 1996, Halajian formed a dental corporation. According to Halajian, the corporation became the owner of the dental practice. The corporation filed a fictitious business name statement stating that it was doing business as Family Dental. Halajian signed the MSA as president of the corporation. However, the Partnership Agreement and Buy-Sell were signed in his individual capacity.

Halajian at one point testified that he believed the Partnership Agreement and the Buy-Sell were an alternative to, and superseded, the MSA. According to Pakravan, for this reason Halajian insisted that these two agreements be signed after the MSA. Halajian explained that by having only Pakravan sign the Partnership Agreement and the Buy-Sell, Manavi and Cohen would have the flexibility to expand their businesses.

Halajian also testified, however, "that after the [MSA] was signed, the Partnership Agreement was no longer in effect because there are two agreements that are

contradictory, so the path that was taken was [to] effectuate a relationship between a dental management company and a professional dental corporation. That was the path taken, and that's how the practice has operated ever since."

The MSA was between Halajian's professional corporation and Frontier. It set forth the responsibilities of the parties. It provided that as compensation, each party would be entitled to 50 percent of the gross revenues collected for Family Dental's services.

The Partnership Agreement stated that it was between Halajian and Pakravan. It provided that Halajian would be responsible for "management of the day to day clinical dentistry" while Pakravan would be responsible for "day to day management of the business aspect and front office of the dental office which duties shall include but are not limited to the following: Marketing and promotion, HMO plans, accounts receivable/patient billing and credit, patient records, accounting and payroll and accounts payable." The Partnership Agreement memorialized the $250 per day payment for "professional dental services."[1] It also provided that Halajian would be entitled to 40 percent of the partnership's profits and losses, and Pakravan would be entitled to 60 percent.[2]

Included in the Partnership Agreement was a provision for the death, disability of voluntary withdrawal of a partner. In that case, the partnership would not be dissolved or terminate. Rather, the partnership would have the option of purchasing the interest of the partner who died, became disabled or chose to withdraw from the partnership.[3]

The Buy-Sell, which was between and signed by Halajian and Pakravan, provided procedures for the purchase and sale of a partner's interest in the event of death, disability

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[1] This later was increased to $500 per day by verbal agreement.

[2] Pakravan's 60 percent share of the profits was paid to Frontier, which is owned by Pakravan, Manavi and Cohen.

[3] Frontier would only manage a dental practice in which it had an ownership interest and buyout option.

or withdrawal from the partnership. It specifically provided that "[i]n the event any Partner desires to withdraw from the Partnership during his lifetime, he shall first offer to sell his interest to the other Partners and Dr. Farhad Manavi and Dr. Sol Cohen/Sedgh."

Family Dental had a bank account, first with Bank of America and later with Union Bank of California. All four dentists were signatories on these accounts.

Pakravan leased a van for Family Dental to use in picking up and dropping off patients who did not have their own transportation. His corporation purchased workers' compensation insurance for Family Dental's employees. Frontier leased a Pitney Bowes stamp machine for Family Dental's use.

Family Dental operated relatively smoothly for a number of years, Halajian providing dental services and Frontier providing management services.

In August 2003, Frontier changed the way it billed the dental practices it managed for services provided by its support center. The support center handled accounts receivable and collections, accounting, human resources, information systems and operations support. The charges for these services had been billed separately, but Frontier consolidated them into one support center allocation fee. This was done to promote efficiency and reduce costs. The support center allocation fee was divided equally among the 15 dental practices Frontier managed.

Halajian did not notice the change until 2004. According to Halajian, the change actually increased the management fees for Family Dental. Halajian wrote a letter to Frontier objecting to the change, and he complained to Pakravan, Manavi and Cohen. They did not reverse the change.

In 2006, Frontier changed the way it divided the support center allocation fee, charging the various dental practices according to their support center usage. The fee also increased slightly, but there were more dental practices to share it and increased revenue.

During this time period, Family Dental's profits were increasing. As agreed, the profits were split with 40 percent going to Halajian and 60 percent to Pakravan.

Since about 2002, a rift had been developing between Halajian on the one hand and Pakravan, Manavi and Cohen on the other. They began to discuss buying each other out. In 2004, the four agreed to sell Family Dental to a third party. Halajian and Pakravan signed an authorization and right to sell agreement with a broker. The agreement provided that if the practice was sold to a third party, the commission would be six percent. If it were sold to one of the partners, the commission would be three percent.

An offer was made for the practice, but it was rejected as being too low. Pakravan, Manavi and Cohen then offered to buy Halajian's 40 percent interest for the full asking price of the practice. Halajian refused.

After that, the relationship between the partners deteriorated. Halajian's productivity began to decrease, until he was generating only 10 to 15 percent of patient revenue.

On June 23, 2006, Halajian took all the money out of the partnership's Union Bank account and put it into an account he opened at Bank of America. As money came into the partnership account, he withdrew it and deposited it into his own account. He took cash payments made to Family Dental and deposited them in the new account. He arranged to have credit card and insurance payments made to his account as well. He also began paying Family Dental's bills and payroll himself.

Halajian took these actions to protest the support center allocation fee, which he felt was "overreaching," i.e., being used over his objection to take partnership funds as soon as they were deposited in the Union Bank account. He never notified Frontier of what he was doing or why.

Halajian also believed that the MSA and the Partnership Agreement were mutually exclusive, and that in order to give effect to the MSA, Pakravan, Manavi and Cohen had to give up their interests in Family Dental. The Partnership Agreement was ineffective "[b]y a choice of path, the Partnership Agreement . . . would have violated the law." It was unnecessary for them to reach an agreement to void the Partnership Agreement, in that "[t]he fact that the [MSA] was effectuated pretty much indicates that, because they

are mutually exclusive, indicates the path taken. Therefore, the partnership is like a still born."

On July 7, 2006, Pakravan, Manavi, Cohen, Family Dental and Frontier filed the instant action against Halajian, setting forth causes of action for breach of the MSA, Partnership Agreement and Buy-Sell; breach of fiduciary duty; conversion; possession and recovery of personal property; misappropriation of trade secrets; constructive trust; accounting; and unfair competition. Thereafter, they filed an ex parte application for the appointment of a limited purpose receiver and the issuance of a temporary restraining order.

The trial court denied the application for the appointment of a receiver. It did, however, issue a temporary restraining order restraining Halajian from, inter alia, receiving partnership funds, withdrawing money from partnership accounts, failing to use Frontier to manage Family Dental, and possession of the Family Dental facility in any capacity other than as a partner. The court also issued an order to show cause (OSC) why a preliminary injunction should not issue during the pendency of the case.

While the OSC was pending, Halajian filed a demurrer as to the causes of action for breach of the MSA and unfair competition and an answer to the complaint. He also filed a cross-complaint against Pakravan and Family Dental for declaratory relief, rescission of the Partnership Agreement for failure of consideration, and dissolution of the partnership.

The trial court issued the requested preliminary injunction. Thereafter, Halajian transferred partnership funds back to the Union Bank account.

The case proceeded to a jury trial. By special verdict, the jury found as follows on plaintiffs' complaint:

1. Breach of the written Partnership Agreement: The parties entered into a written partnership agreement, Halajian breached the agreement, harming at least one of the plaintiffs, with no compensatory damages.

2. Breach of a course of conduct partnership agreement: The parties entered into a partnership agreement as shown by their course of conduct, Halajian breached the agreement, harming the plaintiffs, with no compensatory damages.

3. Breach of Buy-Sell: Halajian and Pakravan entered into the Buy-Sell, Halajian breached that agreement, harming at least one of the plaintiffs, with no compensatory damages.

4. Breach of the MSA: Halajian and Frontier entered into the MSA; Halajian did not breach that agreement.

5. Breach of fiduciary duty: Halajian breached his fiduciary duty to at least one of the plaintiffs, causing harm but no compensatory damages.

6. Conversion: Halajian converted money and other property belonging to at least one of the plaintiffs, causing harm but no compensatory damages.

7. Misappropriation: Halajian misappropriated trade secret software belonging to Frontier, but his misappropriation caused no harm.

8. Punitive damages: At least one of the plaintiffs proved by clear and convincing evidence that Halajian engaged in harmful conduct with malice, oppression or fraud. The jury assessed punitive damages against him in the amount of $205,000.

On Halajian's cross-complaint, the jury found as follows:

1. Breach of contract: The plaintiffs did not breach any of the agreements.

2. Conversion: The plaintiffs converted funds in Halajian's bank account by taking funds for the support center allocation fee. However, Halajian was not harmed by their actions.

3. Punitive damages: Halajian failed to prove by clear and convincing evidence that the plaintiffs engaged in harmful conduct with malice, oppression and fraud.

After the jury returned its special verdict, the trial court directed the plaintiffs to prepare a proposed statement of decision and judgment. Halajian not only objected to plaintiffs' proposed statement of decision but he also filed his own proposed statement of decision and judgment.

The trial court held a hearing on the proposals. Plaintiffs took the position that the partnership should be dissolved according to the Buy-Sell. Defendant Halajian's counsel noted that plaintiffs had not pled a cause of action for dissolution of the partnership. He went on to state, however, "I do not disagree with the direction that's taking place here. And that is the dissolving of this partnership. And I think that had it been pled, we would definitely need to go there. Since we're here, then we'll deal with that issue." He went on to discuss dissolution of the partnership according to the Buy-Sell, which he termed "the road map which I think this court should follow in the dissolution of this partnership." He raised a question as to the partner who should be bought out under the Buy-Sell and continued to discuss how the dissolution should be accomplished.

Defendant's counsel also argued that since the jury did not award plaintiffs compensatory damages, the award of punitive damages could not stand.

The trial court signed, with a few minor changes, plaintiffs' proposed statement of decision and judgment. It ruled the partnership was to be dissolved, with plaintiffs to buy out defendant. It also awarded plaintiffs $205,000 in punitive damages pursuant to the special verdict.

Defendant then moved for a judgment notwithstanding the verdict. He claimed that he should have been found to be the prevailing party, plaintiffs never elected dissolution of the partnership rather than damages as their remedy, and the award of punitive damages absent compensatory damages could not stand. The trial court granted the motion as to the award of punitive damages only.

DISCUSSION

I

On Appeal

A. ***Whether the Trial Court Abused Its Discretion in Excluding Evidence Pertaining to Former Business and Professions Code section 1658.1***

In their opening statements, counsel for the parties discussed the "two-office" rule, which was codified in former Business and Professions Code section 1658.1. This provided that "no dentist shall be granted permission for an additional place of practice, except that a dentist may be granted permission for more than one place of practice if he is in personal attendance at each place of practice at least 50 percent of the time during which such places of practice are open for the practice of dentistry." The rule was repealed in 2000. (Stats. 2000, ch. 224, § 1.)

Counsel for plaintiffs first mentioned the rule, stating that defendant had taken the position that "[t]here was no partnership agreement because there was this two-office rule and it was only a management agreement. [¶] Well, the two-office rule had already been gone for three years . . . ."

Defendant's counsel then told the jury, "What you're going to see is a statute . . . . It was called Business and Professions Code 1658.1 that existed in 1996 when these gentlemen attempted to enter into a partner agreement. And you're going to see that law in the course of this trial. [¶] And what this law very simply said was this: It said that if a dentist was to have more than one practice, that dentist had to participate his or her time 50 percent at that particular location. So since a person can only be at two places 50/50, that restricted a dentist to only two locations or two practices."

Plaintiffs elicited testimony from Manavi about the two-office rule. He testified that he was unaware of the rule at the time Family Dental was opened. He subsequently learned about it. His understanding of it was that "[i]t basically applied that each dentist

can only bill from two locations if they see patients." The rule "was thrown out later on with the Dental Board."

Plaintiffs subsequently moved to exclude any evidence or argument regarding former Business and Professions Code section 1658.1 on the grounds it was irrelevant to the issue of the enforceability of the Partnership Agreement. Additionally, plaintiffs claimed, evidence about the section should be excluded under Evidence Code section 352, in that it would confuse the jury and waste time on a collateral issue. Defendant argued the evidence was relevant to the issue of the parties' intent in entering into the Partnership Agreement rather than the enforceability of the agreement. He also argued that the evidence should not be excluded under Evidence Code section 352, in that its more probative value was not outweighed by the risk it would confuse the jury, and any confusion could be cured by a jury instruction.

The trial court ruled the evidence should be excluded. It explained: "I think the door that you are trying to open is whether or not, even assuming you had a partnership that did not comply with the statute, the Business and Professions Code, I think there is a real issue as to whether or not that has any effect on the validity of the Partnership Agreement. It may be in violation of the statute, the Dental Board may have some issues and they may be able to take some actions, but I don't think that has anything to do with the validity of the contract or the validity of the partnership or an implied in fact contract or any number of things."

The trial court did, however, add that it "want[ed] to have a further hearing on that issue, and I am happy to get your brief on it, and if necessary, if I come to the conclusion it has any effect on it, I'll certainly allow you to reopen." Defendant's counsel pointed out the evidence was relevant "to his intent as to why he did a M.S.A." The court responded, "If you want to inquire as to whether he intended to form this partnership or what his intent was, fair game, no problem. But linking that to his knowledge or understanding of the statute I think at this point is irrelevant, and it has no effect in terms of all of the other issues that I mentioned."

Both defendant and plaintiffs submitted additional briefing on the matter. The trial court found nothing in these papers to change its mind as to its previous ruling.

Only relevant evidence is admissible at trial. (Evid. Code, § 350.) Relevant evidence is that which has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (*Id*., § 210.) The trial court has the duty to determine the relevance and thus the admissibility of evidence before it can be admitted. (*Id*., §§ 400, 402.) The trial court is vested with broad discretion in performing this duty. (*People v. Harris* (2005) 37 Cal.4th 310, 337.) We review the trial court's determination as to admissibility that turns on relevance for abuse of discretion. (*Ibid*.)

In contending that the trial court abused its discretion in excluding the evidence regarding former Business and Professions Code section 1658.1, defendant relies on the principle that "[t]he state of mind of a person is a fact to be proved like any other fact when it is relevant to an issue in the case; and when knowledge of a fact has important bearing upon the issues, evidence is admissible which relates to the question of the existence or nonexistence of such knowledge . . . . Accordingly, whenever the motive or intent with which an act was done is relevant, or whenever the knowledge a person may have had is material to an issue, a wide range of proof is allowed. . . ." (*Larson v. Solbakken* (1963) 221 Cal.App.2d 410, 418, citations omitted.)

Defendant argues that evidence regarding former Business and Professions Code section 1658.1 was relevant to the parties' "state of mind and the effect of their understanding of the law at the time they entered into the competing agreements," i.e., the MSA and the Partnership Agreement. What defendant fails to explain, however, is how the evidence would have affected the jury's determination, that is, how it would have shown the parties intended that the MSA and the Partnership Agreement be mutually exclusive and which one would prevail.

As plaintiffs point out, it is an established principle of contract law that the interpretation of a contract is controlled by the objective intent of the parties as expressed in the words used in the contract, not the parties' subjective intent. (*Horacek v. Smith*

(1948) 33 Cal.2d 186, 193-194; *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 956.) Thus, plaintiffs' motives in entering into the MSA and Partnership Agreement were immaterial. (*Addison v. Burnett* (1996) 41 Cal.App.4th 1288, 1299.)

In any event, the trial court stated that it would permit defendant's counsel "to inquire as to whether he intended to form this partnership or what his intent was, fair game, no problem. But linking that to his knowledge or understanding of the statute I think at this point is irrelevant, and it has no effect in terms of all of the other issues that I mentioned." The court thus permitted the evidence as to motive to come in, just not evidence regarding the particular statute involved.[4] Inasmuch as the trial court's ruling did not exceed the bounds of reason under the circumstances, we find no abuse of discretion in excluding the evidence. (*People v. DeSantis* (1992) 2 Cal.4th 1198, 1226.)

B. ***Whether the Trial Court Abused Its Discretion in Excluding Documents Subpoenaed From the Dental Board***

On October 30, 2006, defendant served a deposition subpoena on the Dental Board of California (Dental Board) through Kern Legal Services, Inc. (Kern) as the deposition officer. The records sought were all records pertaining to Pakravan. Plaintiffs requested that Kern provide them with copies of these records, but Kern failed to do so.

Then on December 8, 2006, plaintiffs served defendant with a request for production of documents requesting: "All DOCUMENTS relating to any and all communications between YOU and the Dental Board of California regarding plaintiff

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[4] As discussed above, counsel for the parties mentioned the two-office rule in their opening statements, and plaintiffs' counsel questioned Manavi about the rule. Defendant asserts that when he attempted to cross-examine Manavi about the rule, plaintiffs objected, and the trial court sustained the objection. Defendant does not support his assertion with citations to the record, however, and we therefore deem it waived. (Cal. Rules of Court, rule 8.204(a)(1); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

Farid Pakravan, D.D.S." and Family Dental. Defendant did not provide plaintiffs with any documents in response to this request.

The amended proposed joint exhibit list was prepared on April 30 and filed on May 2, 2007. Defendant's proposed exhibit list included the documents previously subpoenaed from the Dental Board. Also on April 30, defendant subpoenaed the same documents from the Dental Board. Plaintiffs objected to the admission of these documents on the ground they were not produced during discovery. The trial court sustained the objection.

At a sidebar conference concerning the two-office rule, the question of the admissibility of the documents arose. The trial court reiterated: "I said if something had not been produced in discovery, which I gather [it] had not, I will not allow it in the trial." Defendant's counsel argued that the documents at issue weren't requested during discovery. The trial court agreed to hear the matter later.

At the hearing, the trial court stated that it had read the parties' briefs on the matter and its ruling remained the same: "since the documents were not turned over in discovery, they would not be allowed at trial." Defendant's counsel stated his position that the documents subpoenaed from the Dental Board and those requested in discovery were not the same. He read the request for production of documents as "specifically indicat[ing] that in the event Dr. Halajian had a communication, correspondence—in this case with the Dental Board as it relates to Dr. Pakravan, that is the scope of this document request." That is, "[i]t would have to be a document of communication from Dr. Halajian to the Dental Board. [The documents in question] were submitted by Dr. Pakravan to the Dental Board." Those documents, counsel claimed, were "not within the scope of this discovery."

Plaintiffs' counsel noted that "there was a subpoena during discovery served on the Dental Board by the defendant through a deposition officer," and plaintiffs requested copies of those documents. However, the former "[d]efense counsel went around the deposition officer and got the documents directly. Didn't tell us about it and didn't give us the opportunity to have the documents." Plaintiffs' counsel called the deposition

officer who said he never got any documents and assumed there were none. He added that after the court ruled that the documents were inadmissible, defense counsel "apparently then served a trial subpoena for the very same documents" without serving the required notice to consumer on Pakravan.

Defense counsel argued that there should be no problem, since the documents in question were Pakravan's, not defendant's, and Pakravan should have them in his possession. The trial court responded that whether or not Pakravan had the documents in his possession and was aware of them, "that's not the purpose of the discovery act." Just because he may have them "doesn't mean that those documents are admissible at trial if they've been requested in discovery and not produced. The fact that he may have them—and I don't know that he does—does not change the fact that these were subpoenaed from the Dental Board, they were obtained from the Dental board, and never turned over to the plaintiff, and then they find out, oh, by the way, we've got all these documents we want to introduce at trial and we never let you know that we intend to use these." The trial court therefore was not going to permit the use of the documents at trial.

Defense counsel queried whether the trial court was "finding that these documents that are in question from the Dental Board were actually requested in discovery." Because, he explained, he was not using the documents requested for the deposition but rather was "using the documents that were subpoenaed from the Dental Board that [were] produced right when trial started." Plaintiffs' counsel interjected that "they are the same documents. Everybody could evade third party discovery if we don't give everybody the documents in discovery and just subpoena them from the same third party at trial." Defense counsel acknowledged that he was able to get the documents from defendant's previous attorney, stating that "apparently he had also requested some discovery."

The trial court agreed with plaintiffs' counsel that "the very same issue would be documents that they had in their possession that they intend to use for trial." Again, the court found that the defense abused the discovery process by withholding discovery and therefore could not use the documents at trial. It added that "the documents are irrelevant anyway. The issue with the Dental Board in 1996 is irrelevant." So long as the

Partnership Agreement was not entered into for an illegal purpose, failure to comply with the statute governing dental practices would not void the agreement.

Defense counsel then argued that he did not want to use the documents to void the Partnership Agreement. Rather, he wanted to use them to impeach Pakravan. The documents, he claimed contained prior inconsistent statements as to Pakravan's ownership interest in Family Dental.

Plaintiffs' counsel responded that "[t]his is a perfect example of why this issue gets convoluted." Not only was defense counsel misstating the record, but the jury would have to hear "detailed testimony about the difference between a fictitious business name and an office permit" as well as having "a regulatory expert . . . tell the jury what the regulatory rules are."

The trial court ruled that "having gone through these briefs and looked at the documents, . . . number one, they are inadmissible because they were not turned over per the discovery rule. Number two, they are irrelevant to determining what the relationship was between these parties. And number three, under [section] 352 of the Evidence Code, it opens a whole panoply of discussion that is questionably relevant to anything going on in this case. And so for those three reasons, I am going to stand by the original order and exclude them, and we're not going to go into a situation with whatever was going on with the Dental Board in 1996. . . ."

The trial court has broad discretion in determining whether to impose discovery sanctions. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545.) The trial court's determination is reversible only for an abuse of discretion, i.e., if the determination is arbitrary, capricious or whimsical. (*R.S. Creative, Inc.*, *supra*, at p. 496; *Vallbona*, *supra*, at p. 1545.) The trial court's order is presumed to be correct, however, and the appellant has the burden of demonstrating an abuse of discretion. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 487, disapproved on another ground in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4; *Young v. Rosenthal* (1989) 212 Cal.App.3d 96, 123.)

Defendant first claims, as he did below, that "[a]ccording to the express language of the Request for Production of Documents, Dr. Halajian was only asked to turn over documents relating to communications **between Dr. Halajian and the Dental Board**." Since the documents in question "were, for the most part, documents either issued by Dr. Pakravan to the Dental Board or issued from the Dental Board to Dr. Pakravan," defendant did not fail to comply with plaintiffs' discovery request by failing to provide them with the documents.

Plaintiffs' request for production of documents sought: "All DOCUMENTS relating to any and all communications between [Halajian] and the Dental Board of California regarding plaintiff Farid Pakravan, D.D.S." and Family Dental. While the language of plaintiffs' request could be construed in the manner proposed by defendant, defendant's subsequent actions support the trial court's implied finding that he was guilty of misuse of discovery, rather than misconstruction of the document request, warranting the imposition of sanctions. (See *In re Marriage of Michaely* (2007) 150 Cal.App.4th 802, 810.)

Defendant subpoenaed these documents by a deposition subpoena on the Dental Board through Kern. Neither Kern nor defendant provided plaintiffs with copies of these records, although plaintiffs requested that Kern do so. Plaintiffs' counsel called the deposition officer, who said he never got any documents and assumed there were none. Defendant's former counsel apparently had obtained the documents directly from the Dental Board. Plaintiffs served defendant with the request for production of documents, but the documents were not provided in response to the request. Defendant listed the documents as proposed trial exhibits and then obtained the same documents through a trial subpoena. When plaintiffs objected to the admission of the documents, defendant's counsel came up with various reasons why the objection should be overruled, including that they were not the documents specified in the request for production of documents; they were not the documents obtained through the deposition subpoena but were obtained through the trial subpoena.

This factual scenario supports a conclusion that defendant misused the discovery process in order to evade plaintiffs' pretrial discovery of the Dental Board documents. Defendant has not demonstrated an abuse of discretion in the trial court's imposition of an evidentiary sanction. (*In re Marriage of Michaely*, *supra*, 150 Cal.App.4th at p. 809; *Pate v. Channel Lumber Co.* (1997) 51 Cal.App.4th 1447, 1454.)

Defendant next contends that even if he did fail to produce the documents requested, the trial court was not permitted to impose an evidentiary sanction absent a motion to compel. While in general a motion to compel is required for the imposition of sanctions, there are exceptions.

As noted in Witkin, "[c]ases and treatises have interpreted the Civil Discovery Act of 1986 and its predecessors to require that, before being subjected to sanctions harsher than monetary sanctions, a party must have disobeyed a court order compelling discovery. [Citations.] [¶] This interpretation has been rejected, however, where obtaining a prior order compelling discovery would be futile." (2 Witkin, Cal. Evidence (4th ed. 2000) Discovery, § 264, p. 1090; accord, *Vallbona v. Springer*, *supra*, 43 Cal.App.4th at p. 1546.) It also has been rejected where the revelation of the discovery misuse comes so late that an evidentiary sanction is "virtually the only viable option available" to ensure a fair trial. (*Pate v. Channel Lumber Co.*, *supra*, 51 Cal.App.4th at pp. 1454-1455.)

Here, an order to compel at the time the documents initially were withheld from plaintiffs would have been futile, in that Kern told them that it had not received any documents. (See *Vallbona v. Springer*, *supra*, 43 Cal.App.4th at p. 1546 [requiring plaintiffs to seek order to compel would have been futile in light of defendant's claim requested documents were stolen]; see also *Pate v. Channel Lumber Co.*, *supra*, 51 Cal.App.4th at p. 1456.) Plaintiffs did not learn of defendant's possession of the documents until they received his exhibit list, approximately one week before trial. By this time, the only effective way to remedy the discovery misuse was to exclude the

evidence. (See *Pate*, *supra*, at pp. 1454-1455.) Exclusion of the evidence therefore was not an abuse of discretion. (*Vallbona*, *supra*, at p. 1545.)[5]

C. *Whether the Trial Court Abused Its Discretion in Awarding Attorney's Fees to Plaintiffs on the Entire Action*

Defendant contends the trial court abused its discretion in awarding attorney's fees to plaintiffs on the entire action, in that plaintiffs were not the prevailing parties on their contract causes of action. Plaintiffs request that we disregard defendant's contention, in that it is unsupported by any citations to the record. We agree with plaintiffs that the contention must be deemed waived.

It is axiomatic that in addressing an appeal, we begin with the presumption that the judgment of the trial court is correct. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Fleishman v. Superior Court* (2002) 102 Cal.App.4th 350, 357.) "It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Robbins v. Los Angeles Unified School Dist.* (1992) 3 Cal.App.4th 313, 318.) Meeting this burden requires citations to the record to direct us to the pertinent evidence or other matters in the record which demonstrate reversible error. (Cal. Rules of Court, rule 8.204(a)(1); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115; *Culbertson v. R. D. Werner Co., Inc.* (1987) 190 Cal.App.3d 704, 710.) It is not our responsibility to comb the appellate record for facts necessary to support the contentions on appeal. (*Nwosu v. Uba*, *supra*, 122 Cal.App.4th at p. 1246; *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) The failure to meet this burden waives the issues on appeal.

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5 Defendant fails to address the trial court's other two bases for excluding the evidence: that it was irrelevant and that its admission would be too time consuming and confusing to the jury (Evid. Code, § 352). He therefore waives any claim of error in that regard. (*Title G. & T. Co. v. Fraternal Finance Co.* (1934) 220 Cal. 362, 363.)

(*Nwosu, supra*, at p. 1246; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546.)

Defendant cites nothing in the record to support the factual basis of his contention. In his supplemental motion to augment the record on appeal, we located plaintiffs' motion for attorney's fees, defendant's opposition and the judgment awarding plaintiffs attorney's fees in an amount less than that requested. How the trial court arrived at the amount of the award is left to our speculation, since defendant does not direct our attention to anything in the record demonstrating the trial court's reasoning.

We review an award of attorney's fees for abuse of discretion, reversing it only where there is no reasonable basis for the trial court's award. (*Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 621.) Because defendant does not point us to anything showing the basis of the trial court's award, we are unable to determine whether or not it is reasonable. This is thus an appropriate case in which to deem defendant's contention waived on appeal and presume the award of attorney's fees was an appropriate exercise of discretion. (*In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1133; *Nwosu v. Uba*, *supra*, 122 Cal.App.4th at p. 1246.)

D. *Whether the Trial Court Erred in Dissolving the Partnership and Ordering the Sale of Defendant's Interest to Plaintiffs*

The trial court ordered the partnership between defendant and Pakravan "dissolved with the court awarding the Partnership to Plaintiffs upon the purchase of Defendant's interest in the Partnership."

The court explained in the statement of decision that the jury found defendant breached the Partnership Agreement and his fiduciary duties to plaintiffs, and that he converted partnership property, harming plaintiffs. Defendant's actions made it likely the economic purpose of the partnership would be unreasonably frustrated and it would not

be reasonably practicable to continue the partnership within the meaning of Corporations Code section 16801, subdivision (5).[6] Therefore, the partnership was to be dissolved.

The court further explained that the jury found that defendant breached the Buy-Sell, which controls the dissolution of the partnership. Pursuant to Corporations Code section 16103, subdivision (a),[7] the partnership was to be dissolved according to the Buy-Sell, with defendant selling his interest to plaintiffs.

The Buy-Sell provided that "[i]n the event any Partner desires to withdraw from the Partnership during his lifetime, he shall first offer to sell his interest to the other Partners and Dr. Farhad Manavi and Dr. Sol Cohen/Sedgh." Defendant claims the trial court erred in ordering him to sell his portion of the partnership to plaintiffs, in that there is no evidence he desired to withdraw from the partnership.

The trial court did not order dissolution of the partnership based upon defendant's desire to withdraw from it, however. It ordered dissolution pursuant to Corporations Code section 16801, subdivision (5), on the grounds defendant's actions made it likely the economic purpose of the partnership would be unreasonably frustrated and it would not be reasonably practicable to continue the partnership.

Defendant argues that the trial court's order that he sell his partnership interest to plaintiffs "was not a dissolution of the partnership, as the partnership business was to

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6 Corporations Code section 16801 provides: "A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events: [¶] . . . [¶] (5) On application by a partner, a judicial determination that any of the following apply: [¶] (A) The economic purpose of the partnership is likely to be unreasonably frustrated. [¶] (B) Another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner. [¶] (C) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement."

7 Corporations Code section 16103, subdivision (a), provides that, with exceptions not applicable here, "relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership."

continue, but a dissociation of Dr. Halajian from the partnership." He relies on 9 Witkin, Summary of California Law (10th ed. 2005) Partnership, section 46, page 620, which explains that under the law prior to enactment of the Uniform Partnership Act of 1994, "a partnership was dissolved whenever there was a change in the relation of the partners caused by any partner ceasing to be associated in the activity of the business (e.g., when a partner died, was expelled, transferred an interest, etc.), as distinguished from the winding up of the business. . . . [E]ven though the business might have continued with new partners, it was technically a new partnership. [Citations.]" Under the 1994 Act, however, "a dissociation does not necessarily cause a dissolution. A partnership is dissolved, and its business must be wound up, only on the occurrence of an event enumerated in [Corporations Code section] 16801 [citation]. [Citations.]" (9 Witkin, *op. cit. supra*.)

Here, the trial court found that an event enumerated in Corporations Code section 16801 occurred. Thus, even under the authority cited by defendant, dissolution of the partnership was proper.

Defendant also argues that he, rather than plaintiffs, should have been entitled to purchase the other partner's interest in the partnership, in that he was the treating dentist at Family Dental. He cites no authority in support of his argument, so we deem it waived. (*Mansell v. Board of Administration*, *supra*, 30 Cal.App.4th at pp. 545-546.)

Defendant states that plaintiffs did not raise the issue of dissolution of the partnership until after the jury reached its verdict and was dismissed, implying that dissolution therefore was erroneous. "We discuss those arguments that are sufficiently developed to be cognizable. To the extent defendant perfunctorily asserts other claims, without development and, indeed, without a clear indication that they are intended to be

discrete contentions, they are not properly made, and are rejected on that basis." (*People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19.)[8]

II

On Cross-Appeal

Plaintiffs contend that the trial court erred in granting defendant's motion for judgment notwithstanding the verdict as to the jury's award of punitive damages, in that an award of punitive damages can stand without an award of compensatory damages. We disagree.

It is well established that "[i]n California, as at common law, actual damages are an absolute predicate for an award of exemplary or punitive damages." (*Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 147.) This rule has been interpreted to mean that "[a]n award of actual damages, even if nominal, is required to recover punitive damages." (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 238.)

Other cases have clarified, however, that "an actual award of compensatory damages is not necessary; rather, the plaintiff need only prove that he or she *suffered* damages or injury." (*Gagnon v. Continental Casualty Co.* (1989) 211 Cal.App.3d 1598, 1603, fn. 5.) Thus, an award of punitive damages may be upheld where the plaintiff does not recover a compensatory damage award but is awarded "its equivalent, such as restitution [citation], an offset [citation], damages conclusively presumed by law [citations], or nominal damages [citation]." (*Cheung v. Daley* (1995) 35 Cal.App.4th 1673, 1677-1678, fn. 8; see also *Douglas v. Ostermeier* (1991) 1 Cal.App.4th 729, 750, fn. 3.)

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[8] In any event, the record shows that plaintiffs requested dissolution of the partnership in advance of trial. In their trial brief, they requested judicial dissolution of the partnership.

In *Cheung v. Daley*, *supra*, 35 Cal.App.4th 1673, the court addressed the question "whether a jury can award exemplary damages when it has expressly determined that the plaintiffs were entitled to '0.00' compensatory damages." The court's answer was "No." (*Id*. at p. 1674.)

In reaching this conclusion, the court relied on the Supreme Court's opinion in *Mother Cobb's Chicken T., Inc. v. Fox* (1937) 10 Cal.2d 203. There, the Supreme Court stated: "'"The foundation for the recovery of punitive or exemplary damages rests upon the fact that substantial damages have been sustained by the plaintiff. Punitive damages are not given as a matter of right, nor can they be made the basis of recovery independent of a showing which would entitle the plaintiff to an award of actual damages. Actual damages must be found as a predicate for exemplary damages." . . . [¶] . . . [T]he rule applicable is, as declared frequently, that punitive damages are never more than an incident to a cause of action for actual damages. [¶] . . . Evil thoughts or acts, barren of result, are not the subject of exemplary damages.' (*Id.* at pp. 205-206.)" (*Cheung v. Daley*, *supra*, 35 Cal.App.4th at p. 1675.)

The *Cheung* court noted that since the Supreme Court's opinion in *Mother Cobb's Chicken T., Inc.*, Courts of Appeal have upheld punitive damages in the absence of compensatory damages as long as the record showed that the defendant tortiously harmed the plaintiff. (*Cheung v. Daley*, *supra*, 35 Cal.App.4th at pp. 1675-1676.) But the Supreme Court has more recently affirmed that "actual damages are an absolute predicate for an award of exemplary or punitive damages." (*Kizer v. County of San Mateo*, *supra*, 53 Cal.3d at p. 147; accord, *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004.) Based on these decisions, the *Cheung* court "conclude[d] that the rule of *Mother Cobb's Chicken*—that an award of exemplary damages must be accompanied by an award of compensatory damages—is still sound. That rule cannot be satisfied where the jury has made an express determination not to award compensatory damages." (*Cheung*, *supra*, at p. 1677, fn. omitted.)

Plaintiffs for the most part rely on appellate decisions predating the Supreme Court's reaffirmation of the rule of *Mother Cobb's Chicken*. As did the *Cheung* court,

we decline to follow these decisions. We therefore reject plaintiffs' argument that the jury's findings of harm, without an award of damages, are sufficient to support an award of punitive damages.

Plaintiffs argue that they elected the remedy of dissolution of the partnership, and had they sought compensatory damages they would have been entitled to punitive damages. They contend that "[t]here is no reason why [they] should be penalized for making their appropriate election of remedy for dissolution instead."

The fact is, however, that plaintiffs did seek compensatory damages, and the jury declined to award them any. Under *Cheung*, the jury's decision not to award plaintiffs compensatory damages precludes an award of punitive damages.

Plaintiffs next argue that the presumed damages for conversion are sufficient to support the award of punitive damages. Again, the jury specifically declined to award compensatory damages on this cause of action. Under *Cheung*, this precludes an award of punitive damages.

Finally, plaintiffs assert that case law in other jurisdictions supports reinstatement of the award of punitive damages. We are bound by case law of the California Supreme Court (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455), which establishes that an award of compensatory damages is required for an award of punitive damages (*Kizer v. County of San Mateo*, *supra*, 53 Cal.3d at p. 147; *Cheung v. Daley*, *supra*, 35 Cal.App.4th at p. 1677). The trial court therefore did not err in striking the award of punitive damages.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.